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Workplace Safety and Insurance Appeals Tribunal
Tribunal d'appel de la sécurité professionnelle et de la assurance contre les accidents du travail

ANNUAL REPORT

ANNUAL REPORT 1997

Workplace Safety and Insurance Appeals Tribunal
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CONTENTS

Introduction

The Workplace Safety and Insurance Appeals Tribunal ("WSIAT" or "the Tribunal") considers appeals from final decisions of the Workplace Safety and Insurance Board ("WSIB" or "the Board") under the *Workplace Safety and Insurance Act, 1997* ("the Act"). The Act, replacing the *Workers' Compensation Act*, came into force January 1, 1998. The Tribunal is a separate and independent adjudicative institution. It was formerly known as the Workers' Compensation Appeals Tribunal, until the name was changed pursuant to section 173 of the Act.

This volume contains the Tribunal's Annual Report to the Minister of Labour and to the Tribunal's various constituencies, together with a Report of the Tribunal Chair. It is primarily a report on the Tribunal's operations for fiscal year 1997 and comments on some matters which may be of special interest or concern to the Minister or the Tribunal's constituencies.

The Tribunal Report focuses on Tribunal activities, financial affairs and the evolving administrative policies and practices.

Report of the Tribunal Chair

TRANSITIONS

Nineteen ninety-seven was a year of change for the Appeals Tribunal. In July, the organization said farewell to Ron Ellis, Tribunal Chair since the Tribunal's inception in 1985. His vision shaped the organization and his commitment to providing a high level of service continued unabated for 12 years.

From the outset, Mr. Ellis intended to establish a quasi-judicial tribunal embodying the principles of fair decision-making, informed legal analysis of complex issues, and comprehensible and accessible service for parties within the system. He sought knowledgeable adjudicators from diverse backgrounds to reflect a wide range of experience and perspectives. Mr. Ellis encouraged a tripartite system in which worker and employer Members, together with the Vice-Chairs, attempted to develop a consensus-based system producing fair and well-reasoned decisions. He established the Tribunal Counsel Office ("TCO") to provide the appropriate legal preparation. His imprimatur on the 1997 Tribunal is unmistakable.

In addition to making structural contributions, Mr. Ellis served as a mentor and friend who was dedicated to the sharing of ideas for the betterment of the organization. He also solidified his concept of the Tribunal as a model for quasi-judicial decision-making, through the hearings he held and decisions he produced. Those who are knowledgeable in compensation law are well aware of his contribution. *Decision No. 915* is a monumental work - in all senses of the word. His decisions demonstrate a careful and considered approach to issues, and his detailed analyses set the bar for the other Tribunal adjudicators. The Tribunal continues to reflect his creative vision.

Anticipation of Bill 99 (the new *Workplace Safety and Insurance Act, 1997*) becoming law in January 1998, led to restructuring and a reduction in the complement of full-time employer and worker Members in 1997. While the Tribunal reduced its full-time roster, a number of experienced and valued members were appointed in a part-time capacity and continue to provide valuable adjudicative assistance. Similarly, a number of full-time Vice-Chairs made the transition to part-time,

allowing them to pursue new avenues of career development while providing the Tribunal with much appreciated continuity and quality adjudication. Three new Vice-Chairs were appointed, who bring new and interesting perspectives to the institution. The Tribunal has also added resources to TCO in an ongoing attempt to improve service to the parties and to facilitate case management strategies.

Towards the end of the year, a Ministry cost-benefit analysis concluded that the Tribunal should remain in its present location – a decision which now allows the Tribunal to proceed with further restructuring, including the incorporation of some shared facilities with one or more other agencies.

All in all, an eventful year.

TRIBUNAL PERFORMANCE

I am pleased to report that, in a year of flux and change, the organization maintained its professional comportment and, indeed, increased its productivity in almost every measurable area. This is especially noteworthy as cases continued to arise at the Tribunal at record levels.

As noted in the *Annual Report 1995 and 1996*, the 1996 figure of 3,604 new cases represented a 64% increase over the 1994 figure. In 1997, TCO received 5,107 cases, an increase of 42% beyond last year's record numbers.

In 1996, the Tribunal disposed of 2,512 cases, whereas this last year the figure was 3,070, a 22% improvement in productivity. Similarly, we managed a 20% increase in decisions released this year, compared to 1996. In 1997, the number of hearings held climbed to 30% over 1996 levels.

In the first quarter of 1998, the numbers continued to escalate. Between January 1 and March 31, the Tribunal received 3,422 new cases, while pushing dispositions up to 2,368. The first quarter showed a 10% increase in the number of hearings held, while producing a 35% increase in decisions released compared to 1997.

Over the long term, this flood of appeals should emerge as an anomaly. However, for the next two years (given the likely impact of time limits in the new legislation and ongoing restructuring at the Workplace Safety and Insurance Board) a "deluge" of appeals will be the norm. The consequences for the Tribunal cannot be understated.

To cope effectively with the rise in incoming cases, we must continue to improve productivity. In our view, we must accomplish this goal while maintaining accessible service and providing quality decisions. The Tribunal anticipates continuing to explore

alternative methods of case resolution. Our recent experiment in fast-tracking and grouping written hearings resulted in significant production increases. We anticipate expanding this approach to other areas in 1998.

At a certain point, the Tribunal's ability to increase productivity with existing resources will plateau. Realistically, the people who hear cases and issue decisions – even when employing innovative and alternative methods – can only do so much without sacrificing either the quality of the hearing process or that of the decision itself. The public is not served by increased productivity if it comes at the expense of service. Client satisfaction – in terms of parties' perceptions of a fair and impartial consideration of the issues taking place – is important in any performance measure of the Tribunal's activities.

The Tribunal recognizes that its production goals must be accomplished on a cost-effective basis. We have undertaken to add more part-time Vice-Chairs to our roster, as a fiscally responsible means of increasing output and in recognition that the significantly increased caseload from the Workplace Safety and Insurance Board should not, indefinitely, continue to escalate.

While it remains to be seen how we will perform for the remainder of 1998, given our recent success, we are confident that the percentage of cases processed by the Tribunal will continue to increase throughout the year.

Quite possibly as a result of the increased volume, there was no measurable change in our turnaround time for releasing decisions and, with the increased numbers expected for this year, it may not be reasonable to expect rapid improvement in this area; however, the additional resources will ensure that some improvement does occur.

REPRESENTATIVES' CODE OF CONDUCT

As noted in the *Annual Report 1995 and 1996*, the varying quality of independent consultants (who, unlike lawyers, are not regulated in any meaningful way) made a Code of Conduct a desirable tool to promote effective, fair and cost-effective adjudication. The Tribunal has developed a Code in a readable and accessible form. It is important to stress that the aim of this Code is not to deter non-lawyers from representing either workers or employers but, rather, to ensure that basic standards of knowledge, professional comportment and fairness are maintained. The Tribunal represents the final level of appeal in the workplace safety and insurance system. The public and the parties have a right to expect that the Tribunal's processes and decision-making obligations will not be obstructed or delayed by uninformed, abusive or incompetent representatives. It is hoped that the Code will provide a balanced means to achieve this objective.

HIGHLIGHTS OF THE 1997 CASE ISSUES

This section highlights some legal, factual and medical issues dealt with by Tribunal decisions during the reporting period. It reflects a selection of issues which seem likely to be of particular interest, represented in a random order.

During 1997, the *Workers' Compensation Reform Act, 1997*, S.O. 1997, c. 16 was enacted; however, the new Act did not come into force until January 1, 1998. This Act is commonly referred to as Bill 99. Schedule A of Bill 99 enacted the *Workplace Safety and Insurance Act, 1997*, which creates a scheme of workplace safety and insurance for accidents occurring after December 31, 1997. Pursuant to section 102, the pre-1997 *Workers' Compensation Act* as amended by Bill 99, continues to apply with respect to pre-1998 injuries. The pre-1997 Act, in turn, continues the pre-1985 Act (for accidents occurring before the first day of April, 1985) and the pre-1989 Act (for accidents occurring on or after the first day of April, 1985 and before the second day of January, 1990). Thus, for example, the pension scheme which applies to permanent disability under the pre-1985 Act continues in effect for pre-1985 injuries.

During 1997, the Tribunal adjudicated cases pursuant to the pre-1997 *Workers' Compensation Act*, the pre-1989 Act and the pre-1985 Act. Cases decided during this period will continue to have relevance under the new legislation with respect to those provisions of the earlier Acts which are continued. One important distinction between Bill 99 and the earlier Acts, is that Bill 99 explicitly requires the Tribunal to apply Board policy and creates a defined policy-audit function for the Tribunal. Another difference is that vocational rehabilitation is replaced by labour market re-entry plans.

Re-employment

Section 54 of the pre-1997 Act created a new obligation for specified employers to offer to re-employ injured workers. The Board has a discretion to impose a penalty on the employer and/or to award benefits to a worker for up to one year if the employer breaches this obligation.

Previous annual reports noted an area of continuing difference between the Board and the Tribunal over the test an employer must meet to show that it has discharged its obligations under section 54. Tribunal cases have held that the intent of section 54 is to place an injured worker in the position the worker would have been in if the workplace accident had not occurred. The general Tribunal test is whether the employer displayed "anti-injured-worker animus", that is, whether the reasons for termination related to the workplace injury or constituted an attempt to avoid section 54. The wording in Bill 99 adopts the Tribunal's approach.

Tribunal cases continued to take this approach during the current reporting period. Thus, an employer was found not to have breached its re-employment obligation when it did not rehire a worker who had received notice of lay-off prior to his accident. The employment at the time of the accident was limited to a definite term and the occurrence of the accident did not change the employment to an indefinite term. See *Decision No. 795/97* (1997), 43 W.S.I.A.T.R. 285. Section 54 requires an employer to offer available, sustainable work. Thus, an employer was not required to offer a special "weekend warrior" shift which was implemented as a short-term measure to deal with the fluctuating needs of operating on a "just-in-time" basis. See *Decision No. 464/96* (1997), 42 W.C.A.T.R. 124.

Decision No. 872/96 (1997), 44 W.S.I.A.T.R. 81, contains an interesting explanation of the interaction between the duty to accommodate under section 54 and that under the Ontario *Human Rights Code*. When a non-compensable condition is accommodated by an employer prior to the workplace injury, this accommodation will be factored into the accommodation required after the injury. However, if there was no accommodation for the non-compensable condition prior to the workplace injury, section 54 does not require a non-compensable condition to be accommodated. Human rights concerns unconnected with a compensable injury are outside the Tribunal's jurisdiction.

Decision No. 647/95I2 (1997), 42 W.C.A.T.R. 8, considered a constitutional argument that the section 54 re-employment obligation, which is provincial legislation, could not apply to a federal undertaking regulated by the *Government Employees' Compensation Act*, R.S.C. 1985, c. G-5. The Panel concluded that the return to work provisions were a meaningful part of the compensation available to injured workers in Ontario and were applicable to a federal undertaking even though they might have some impact on that undertaking, as long as the provisions were in harmony with the purpose of the broader legislation and did not substantially affect the essential federal aspect of the federal undertaking. The penalty provision was also upheld as valid provincial legislation, as it facilitates the operation of section 54 and is reasonably incidental to it. There was no paramountcy issue in *Decision No. 647/95I2*, since the facts occurred prior to the effective date of regulations under the re-employment provisions contained in the *Canada Labour Code*, R.S.C. 1985, c. L-2, as amended. The Panel also noted that the *Canada Labour Code* allowed workers to avail themselves of laws that are more favourable to them.

Penalties under the Re-employment Provisions

Section 54(13) creates a discretionary penalty for breach of an employer's obligations under section 54. The maximum amount of the penalty is tied to the amount of the worker's net average earnings for the year preceding the injury. The dollar amount of the penalty is variable and, for injured workers with high paying jobs, can be quite significant.

Board policy is to impose the maximum penalty as a general rule unless the employer cannot hire the worker for reasons beyond its control (for example, a market collapse) or the employer subsequently re-hires the worker. Tribunal decisions continued the trend noted in previous annual reports of taking a more flexible approach to penalty assessments. A section 54 penalty is not determined independently of other considerations in the employment situation. Thus, a $30,000 penalty was waived despite evidence of some anti-injured-worker animus where the employer had legitimate concerns about the worker's performance and there was a decision from the Office of Adjudication that the employer had just cause for dismissal. See *Decision No. 1518/97* (1997), 44 W.S.I.A.T.R. 172.

Future Economic Loss Awards and Supplements

The pre-1997 Act replaced a scheme of permanent pension awards, with separate awards for future economic loss (FEL) and non-economic loss (NEL). Section 43 provides for FEL benefits where the worker suffers injury resulting in temporary disability for 12 continuous months or permanent impairment. The statutory provision is quite complicated, as it creates its own review process and time limits for the original FEL decision (D1) and FEL reviews (R1 and R2). This section is also closely tied to the right to rehabilitation in section 53, since a FEL award requires consideration of a number of factors including a worker's vocational rehabilitation prospects and what the worker is likely to earn in suitable and available employment. Section 43(9) creates a supplement to the FEL award where a worker is co-operating in a Board-authorized vocational or medical rehabilitation program.

Annual Report 1994 mentioned that *Decision No. 776/93I* (1994), 32 W.C.A.T.R. 114, contained a thorough discussion of FEL provisions, but that a final decision was deferred pending additional submissions from the Board, the parties and Tribunal counsel. During this reporting period, *Decision No. 776/93* (1997), 43 W.S.I.A.T.R. 16 was released.

Many of the problems confronting Tribunal panels had been connected to the time limits for decision-making and review found in section 43(10) and (13). *Decision No. 776/93* adopted a more flexible approach to section 43(10) which states that "where possible" the Board shall make the original FEL determination within certain time limits. "Where possible" was found to require a judgment to be made about whether sufficient evidence was available to make the initial FEL determination on a balance of probabilities. If it was not possible within the time limits, a second judgment was needed to select the appropriate date. The problem of retroactively applying time limits in FEL cases may not be as difficult in future, as Bill 99 repealed and replaced section 43(13) with a more discretionary review framework.

Decision No. 776/93 also commented that the Board was not limited to performing FEL reviews at the designated times, but still had a general power to reconsider.

With respect to the calculation of FEL benefits, *Decision No. 776/93* found that section 43(3) does not mandate a projection of future earnings loss, but a determination of the worker's employment opportunities when medical and vocational rehabilitation is completed. The Panel also upheld the Board's policy of deducting CPP benefits from earnings under section 43(7), which states that the Board "shall have regard" to any disability payments the worker may receive for the injury under the Canada Pension Plan. Section 43(7) created a discretion regarding treatment of CPP benefits and the Board policy to reduce FEL benefits by the full amount of CPP benefits was within its discretion.

Decision No. 863/95 (1997), 44 W.S.I.A.T.R. 61, considered a similar argument about CPP benefits. The majority found that the Board had correctly interpreted section 43(7) in deducting CPP benefits. It distinguished several Supreme Court of Canada decisions in insurance cases and found Canada Pension Plan is a mandatory scheme and workers' compensation is a no-fault system. It could not be said in the workers' compensation setting, that a negligent defendant had benefited from an injured party's prior decision to buy insurance.

Decision No. 344/93R (1997), 41 W.C.A.T.R. 1, accepted the Board's view that a section 43(9) FEL supplement can only be paid in total or not at all and varied an earlier order that was based on the assumption that a fluctuating wage loss supplement was available under the FEL scheme, as it had been under the earlier pension scheme.

The question of the obligation of a self-employed worker to accommodate the workplace to a compensable disability was considered in *Decision No. 1454/97* (1997), 44 W.S.I.A.T.R. 153. It was held that a self-employed worker should be held to the same level of accommodation as would reasonably be expected from an average employer.

Non-economic Loss Awards

Under the pension system, workers were not entitled to compensation for non-economic losses such as loss of enjoyment of life. Section 42 of the pre-1997 Act creates a non-economic loss (NEL) award to compensate for this type of loss following a permanent disability. Section 42 contains a technical assessment process including a formula for calculating NEL awards, a system of medical assessments by doctors, a process for challenging medical assessments and a separate NEL review process. The section requires the Board to make the NEL determination in accordance with a prescribed rating schedule while having regard to the NEL medical assessments. By regulation, the American Medical Association Guides (AMA Guides) are prescribed as the rating schedule.

Previous Annual Reports have noted a divergence in Tribunal decisions on whether the Board has any discretion to deviate from the rating schedule when an impairment is specifically listed in the AMA Guides. See *Decision No. 269/93* (1994), 30 W.C.A.T.R. 123, which held that the Board did not have any discretion, and *Decision No. 122/96* (1996), 38 W.C.A.T.R. 205, which found the Board continued to enjoy the right to exercise some reasonable judgment in applying the AMA Guides. *Decision No. 28/97* (December 1, 1997) agreed with *Decision No. 269/93* that the Board could not effectively amend the AMA Guides by adding a separate line for amounts not specifically listed. The AMA table provided for percentages of impairments for various ranges of flexion of the dorsal lumbar spine. The Panel interpreted the table as providing that all measures of lateral flexion from 0% to 9% received a 5% rating.

The appropriate process for obtaining a second NEL assessment was considered in *Decision No. 511/96* (1997), 42 W.C.A.T.R. 132, when the original NEL assessment could not be used as it was inconsistent with other material in the worker's file and the worker had died. *Decision No. 572/97* (1997), 43 W.S.I.A.T.R. 260, found that a bilateral bursitis of the knee condition that was not covered by the AMA Guides should be assessed by analogy to the rating schedule pursuant to section 15(2) of Regulation 1102. *Decision No. 277/96I* (1997), 42. W.C.AT.R. 83, directed the Board to reassess the NEL award where a significant aspect of the worker's impairment had been overlooked. The Panel would make a final decision after the Board had performed the reassessment. The Panel's approach in this case was similar to that taken in some pension appeals under the pre-1985 and pre-1989 Acts.

Transitional Supplements

In addition to creating the NEL and FEL schemes for post-1989 injuries, section 147 of the pre-1997 Act also provides for supplements for workers receiving pensions under the pre-1985 and pre-1989 Acts. Section 147 supplements are often referred to as "transitional supplements", since they are found in Part III of the pre-1997 Act, entitled "Transitional Provisions". Transitional supplements, like FEL supplements, are linked to a worker's prospects for medical and vocational rehabilitation.

Section 147(2) provides that the Board shall pay a supplement to a worker who is likely to benefit from a vocational rehabilitation program which could help increase the worker's earning capacity so that it approximates the pre-injury earnings. Section 147(4) provides that the Board shall give a supplement to a worker who is not likely to benefit from a vocational rehabilitation program or whose earning capacity after such a program would not approximate pre-injury earnings. A section 147(2) supplement is paid only while the worker is participating in a Board-approved program. A section 147(4) supplement continues until the worker becomes eligible for Old Age Security benefits.

Earlier Annual Reports recorded that *Decision No. 689/91* (1994), 30 W.C.A.T.R. 10, found that there was no statutory requirement to consider the reason for a worker's lack of vocational rehabilitation potential in determining entitlement to a section 147(4) supplement. Subsequently, the Board made general submissions on the interpretation of section 147(4), explaining the Board's policy that entitlement to a section 147(4)(a) supplement depended on the worker's wage loss being at least partially related to a compensable injury. These submissions were considered in *Decision No. 213/93* (1995), 34 W.C.A.T.R. 84, but it was not necessary for the Panel to decide that issue. While no decisions during the current reporting period have expressly considered the Board's submissions, Tribunal decisions have generally applied the Board's test and considered whether a worker's wage loss is at least partially related to a compensable injury. For example, in *Decision No. 280/94* (1997), 43 W.S.I.A.T.R. 105, a section 147(4) supplement was granted where a worker was laid off due to downsizing when a number of job descriptions were combined and the worker could no longer perform part of the combined job due to his compensable injury.

The question of whether a worker receiving several different pensions for different conditions could be entitled to more than one transitional supplement was considered in *Decision No. 877/94* (1997), 41 W.C.A.T.R. 46. Board policy provided that a worker could get two section 147(4) supplements for two different injuries, but could only get one section 147(2) supplement since a vocational rehabilitation plan must consider the whole worker. The Panel reviewed the relevant legislative history and noted a change from discretionary vocational rehabilitation and a corresponding supplement under the pre-1985 and pre-1989 Acts, to a mandatory consideration of vocational rehabilitation and a supplement under the pre-1997 Act. The Panel emphasized that section 147 provided a transition between the two systems of compensation, and was neither one nor the other. The Panel accepted that a vocational rehabilitation plan must consider the whole person, both compensable and non-compensable conditions. Similarly, the whole person must be considered in deciding whether a worker was likely to benefit from vocational rehabilitation and only one section 147(4) supplement can be awarded.

Another major issue to come before the Tribunal was the appropriate scope of the Board's review of a transitional supplement. Section 147(13) provides that the Board "shall review" a supplement in the 24th and 60th month and "recalculate" the amount of the supplement in accordance with subsections (9) and (10). *Decision No. 941/94* (1997), 41 W.C.A.T.R. 69, again considered the legislative history of the transitional provision. The Panel concluded that while the amount of a section 147 supplement is open to review and recalculation, the entitlement itself is constant, once the initial determination has been made. The Panel noted that if the Act can reasonably accommodate two interpretations, one of which is set out in Board policy, the Board interpretation should generally be followed. The Board's reading of section 147 in this case was consistent with the overall intent of the section and should be followed. In unusual circumstances, the initial section 147 decision might be so patently flawed that a decision might need to revisit the whole process at the time of the 24th or 60th month

review, but this would be the exception and not the rule. On the facts of the case, the Board had made an unwarranted reassessment of the initial entitlement decision and the supplementary benefits were reinstated.

Given that transitional supplements are connected to earnings potential, a worker's co-operation with vocational rehabilitation may need to be assessed. *Decision No. 1211/96* (1997), 42 W.C.A.T.R. 205, held that the critical factors in assessing a worker's earning capacity are the worker's personal and vocational characteristics. It was not appropriate to assess a worker's earning capacity based on a high level of skill and high motivation where these were not present. An assessment should assume an average degree of motivation and skill. The Panel left open the possibility that a worker's motivation might be so low as to break the chain of causation with the result that the loss of earning capacity did not result from the injury. *Decision No. 85/97* (1997), 43 W.S.I.A.T.R. 190, held that while a failure to co-operate with vocational rehabilitation would disqualify a worker from receiving a section 147(2) supplement, it would only disqualify a worker under section 147(4) if co-operation with a vocational rehabilitation program would have been likely to increase the worker's earning capacity so as to approximate the pre-accident earnings under section 147(2). Post-accident earnings of $10.40 an hour were found to approximate a worker's approximate pre-accident earnings of $12.00 per hour. See *Decision No. 1071/97* (October 6, 1997).

Occupational Stress

The *Annual Report 1995 and 1996* recorded that while earlier Annual Reports had noted that the Board was in the process of developing a policy on chronic occupational stress, the Legislature was considering enacting provisions in Bill 99 which would exclude compensation for chronic stress. These provisions received legislative approval in 1997, but did not come into effect until January 1, 1998. Accordingly, during this reporting period the Tribunal adjudicated stress appeals under the pre-1997 Act on a case-by-case basis. See *Decision No. 719/96* (1997), 42 W.C.A.T.R. 144, which noted that the fact that the Board did not have an established policy, meant that cases were approached on an individual basis. The lack of a policy might be due to the limited ability of the compensation system to produce a balanced evidentiary picture in stress cases.

The Tribunal generally applies a two-part test to stress cases. The "reasonable person" or "average worker" test considers: (1) whether a worker of average mental stability would perceive the workplace circumstances as mentally stressful; and, (2) if so, whether the average worker would be at risk of suffering a disabling mental reaction.

During this reporting period, there were a number of appeals in 1997 involving allegations of sexual harassment or other types of harassment in the workplace. See

Decisions No. 500/94 (April 30, 1997), *609/97I2* (November 20, 1997) and *754/96* (December 11, 1997). In *Decision No. 806/96* (October 21, 1997) the Panel applied a reasonable person test in finding that a worker was entitled to compensation for disabling stress where she was being stalked by a co-worker. However, her fibrositis condition, while related to stress, was not compensable since it was found to be due to the stress resulting from her personal decision to pursue complaints to the Ontario Human Rights Commission, the Ontario Labour Relations Board and a court action.

Decision No. 77/97 (1997), 42 W.C.A.T.R. 225, considered the question of harassment in the context of the worker's right to sue her employer for failing to take action to prevent her from being stalked by a co-worker. Since the worker would be entitled to compensation under the Act, the right of action against the employer was removed. *Decision No. 530/97* (October 17, 1997) considered an appeal by a worker who had been the subject of allegations of sexual harassment and investigation pursuant to the employer's sexual harassment policy. While the worker had been placed in a very difficult personal position by the investigation, including the fact that it was confidential and she was not informed of the process, her resulting upset and discomfort did not constitute a disability. This decision makes a distinction that the Tribunal has drawn in previous cases, between an emotional reaction and a true disability.

The effects of downsizing and the eventual closure of a plant were considered in *Decision No. 861/96* (1997), 42 W.C.A.T.R. 155. In that case, the worker had advance notice of the closing in time to accustom himself to the idea. Even if the worker had been surprised by the plant closure, this was not an uncommon event in an era of fluctuating economy, job loss and downsizing. The average worker might find the situation stressful, but there would not be a disabling mental reaction. While the Panel did not need to decide this, it commented that fear of unemployment may not be a matter falling within the scope of workers' compensation legislation in any event.

Finally, *Decision No. 719/96* (1997), 42 W.C.A.T.R. 144, considered whether stress arising from a pending lay-off and/or being blamed for damaging equipment at work were acute stressors of the sort which might contribute to a heart attack. The Panel concluded that the worker had a high risk profile for a coronary artery disease and the heart attack was an inevitable step in the progression of the disease.

Occupational Disease

Occupational disease cases involve workplace exposure to harmful processes or substances. The Tribunal's interpretation of the law in this area remains the same. Disabilities are compensable if they fall within the statutory provisions governing either "occupational disease" or "disablement".

In a disablement case, panels will examine the evidence relating to an individual worker to see if it supports a causal relationship, as well as general, medical and scientific evidence. For example, *Decision No. 915/96* (1997), 41 W.C.A.T.R. 237, denied compensation for a claim for chronic obstructive lung disease (COLD) due to exposure to dust as there was medical evidence that the worker's smoking was sufficient to account for the degree of COLD and the evidence of any workplace contribution was tentative. However, compensation was granted in *Decision No. 812/96* (May 23, 1997), where the worker had a total of 157.3 months of mine dust exposure in Ontario, the worker's cigarette smoking was less significant than it had been in many other cases, and there was specific medical evidence supporting a workplace relationship and no specific contrary medical evidence.

Other interesting occupational disease cases include *Decision No. 820/95* (1997), 42 W.C.A.T.R. 73, which considered a claim for lung cancer due to exposure to a sinter plant in the nickel industry and *Decision No. 305/97* (1997), 42 W.C.A.T.R. 282, which approved a provisional pension where exposure to sunlight in the course of employment had aggravated a pre-existing condition of discoid lupus erythematosus (DLE). Ongoing sensitivity to sunlight was due to the underlying condition and a permanent pension was not granted since there was no permanent aggravation from the workplace once the exposure had ceased.

Earnings Basis

The pre-1997 Act and earlier Acts contain provisions specifying how a worker's earnings basis is to be calculated for benefit purposes and what is to be included and excluded in the calculation. While the provisions in the three Acts are similar, they are not identical. A number of decisions were issued during this reporting period on earnings basis.

An ongoing issue is whether unemployment insurance benefits (now employment insurance benefits) should be included as part of the earnings basis where the period of time during which a worker was unemployed is included in the calculation. *Decision No. 1462/97* (1997), 44 W.S.I.A.T.R. 163, noted that the prevalent approach at the Tribunal is to include unemployment insurance benefits. In many cases there is a real and reasonable expectation that the worker's average earnings would consist of both employment earnings and unemployment insurance benefits and these are factored into the ongoing employment relationship. The Board's current policy on earnings basis is to include periods of unemployment where they are a regular or predictable part of the employment pattern, but not to include the unemployment insurance benefits. *Decision No. 1462/97* held that where there was a pattern of employment and lapses of employment which indicated that unemployment insurance benefits were an integral part of the earnings pattern, it was appropriate to include these benefits in the calculation of the worker's average earnings. The Panel also noted that the Board, in its

proposed policy framework under the somewhat different legislative context of Bill 99, appears to have accepted the prevalent Tribunal view.

Several Tribunal cases have considered whether vacation pay in the construction industry should be included in the earnings basis in various situations. See, for example, *Decision No. 119/97* (1997), 43 W.S.I.A.T.R. 201, and *Decision No. 911/96* (1997), 42 W.C.A.T.R. 180. There have also been a number of decisions considering the appropriate earnings basis for workers who hold down more than one job. See, for example, *Decision No. 431/97* (May 22, 1997).

Calculation of earnings for self-employed workers has been considered in a number of cases, particularly whether it was more appropriate to use the self-employed worker's estimate on which he had paid assessments, or his taxable income for the year. See *Decision No. 73/97* (1997), 41 W.C.A.T.R. 268, *Decision No. 425/97* (1997), 43 W.S.I.A.T.R. 229, and *Decision No. 977/97* (November 26, 1997) which commented that the Board should assess the accuracy of a self-employed worker's estimate before coverage is granted, rather than after benefits are claimed. *Decision No. 113/97* (1997), 41 W.S.I.A.T.R. 274, considered the Board's policy for calculating the earnings basis for an owner/operator of a truck. While the Board needed policies to deal with a variety of situations in a simple, efficient and consistent manner, actual financial data should be used wherever possible. In this case, the information was readily available in a collective agreement and the real merits and justice of the case required that the actual data be used.

Decision No. 826/96 (1997), 41 W.C.A.T.R. 225, considered deductions for income tax, Canada Pension Plan premiums and unemployment insurance premiums again in the context of the self-employed person. While it was appropriate to make deductions for CPP premiums, since these were mandatory annual or quarterly contributions, no deduction should be made for unemployment insurance benefits as self-employed persons did not participate in that plan.

Experience Rating of Employers (NEER and CAD-7)

NEER and CAD-7 are experience rating programs which are intended to shift some of the burden of a rate group's costs to employers with above average claim costs. As of January 1, 1995, NEER includes all rate groups in Schedule 1 except those in CAD-7. The CAD-7 plan covers 11 rate groups in the construction industry. The CAD-7 formula involves a rating factor based on man hours, and looks at information over a two-year period on average expected accident costs and the firm cost index, firm frequency index and firm performance index. For NEER, the Board reviews the claim costs for an employer for a given accident year in each of the three following years and compares these to the assessment rate for the rate group.

Where an employer is retroactively relieved of certain costs associated with a claim, for example, through the Second Injury and Enhancement Fund (SIEF), the question arises as to whether there should be a retroactive adjustment to the experience rating assessment. Several appeals during this period have considered this issue in the CAD-7 context. The Board's policy is to exclude costs from claims more than five years old when calculating CAD-7 assessments. However, prior to the summer of 1995, the Board's practice generally was to allow retroactive adjustments outside this "five-year window". In the summer of 1995, this policy changed and adjustments outside the five-year window were only allowed in exceptional cases. *Decision No. 180/97* (1997), 44 W.S.I.A.T.R. 98, held that where an employer made a request for retroactive adjustments prior to the change in policy, the practice as it existed at the time of the request should be applied. And see *Decision No. 1249/97* (December 16, 1997). However, *Decision No. 1433/97* (December 17, 1997) noted that while some cases had applied the policy in effect at the time of the employer's application, the employer's delay of seven years in applying was excessive and the retroactive adjustment should not be allowed.

Other Employer Issues

A number of Tribunal decisions have commented on Board policy as it affects employer concerns. *Decision No. 499/96* (1997), 43 W.S.I.A.T.R. 166, contains a good outline of the Tribunal's current approach to Board policy. It recognized that the Board is entitled to rely on policy to limit the retroactive reclassification of employers to six years under section 69(2)(a) and section 107 of the pre-1997 Act. The Tribunal applies a "reasonableness" standard of review in considering appeals from broad discretionary issues in which there is a systemic interest; however, this is balanced against the fairness concerns of the employer in a particular case. The Tribunal will not interfere with Board policy unless it is inconsistent with the Act, or unless the policy has been applied in an arbitrary, unreasonable or discriminatory fashion against a particular employer. The Tribunal upheld the Board's policy on retroactive reclassification, but allowed the employer's appeal that the Board should pay interest on the over-assessment. While the Board had considered adopting a policy on interest payments to employers, it had not done so. In the absence of policy, the Panel adopted the reasoning in *Decision No. 526/93* (1996), 39 W.C.A.T.R. 14, and examined the merits of the case. Considering the employer's status as a non-profit organization, that it voluntarily applied for coverage and that the Board was not required to repay the full over-assessment, the Panel concluded that the real merits and justice of the case indicated that the Board should exercise its discretion to pay the employer interest. *Decision No. 534/97I* (1997), 43 W.S.I.A.T.R. 252, recognized that while the Board is always entitled to alter policy, where policy was altered to the detriment of anyone carrying on business in Ontario, it should be altered on a prospective basis rather than retroactively.

Decision No. 998/94 (1997), 43 W.S.I.A.T.R. 117, considered an appeal from a penalty assessment of $275,000 under section 103(8) of the pre-1997 Act. The Panel commented

that the authority to levy penalty provisions of this magnitude carried with it the responsibility to establish and communicate clearly the evidence that led the Board to the conclusion that such a penalty is warranted, as well as the responsibility to develop policy that is consistent with the Act and regulation and to apply the policies as uniformly and consistently as possible.

Decision No. 323/96 (1997), 42 W.C.A.T.R. 88, considered the argument that there was a systemic unfairness in requiring the employer to pay a penalty assessment under section 91(7) of the pre-1990 Act, after this approach had been replaced by the more equitable NEER policy. While the Panel agreed that the NEER program was a more equitable assessment system, and that future amendments to assessment provisions would produce a more refined and equitable system, this did not mean that the Board's earlier policies were invalid. The Panel agreed with *Decision No. 504/92* (1995), 36 W.C.A.T.R. 37, that NEER did not provide a mechanism to protect the system from employers who had already imposed a financial burden on the rate group. It was not unreasonable for the Board to use section 91(7) penalties to try to recapture costs where the employer had previously had a poor accident record. However, the Panel set aside the penalty where the employer had made a prima facie case that it was part of a separate industry within a rate group. The employer should then have been able to use Board data on industries in the rate group. Since no such data existed, the employer could not demonstrate its defence and the penalty was set aside.

Finally, the Board's policy on late payment charges was considered in several cases. *Decision No. 477/97* (1997), 43 W.S.I.A.T.R. 247, noted that Board policy does not specifically deal with relief from late payment charges, although there are policy criteria for relieving from penalties for failure to notify of an accident. Full relief is granted if there are causes beyond the employer's control, e.g., flood, fire, theft, postal interruption, and partial relief is available for excusable reasons. In applying the real merits and justice provision in the Act, the Panel found it was reasonable to consider similar grounds of relief for late payment charges. And see *Decision No. 799/95* (1997), 42 W.C.A.T.R. 52.

Right to Sue Applications

Workers' compensation is often referred to as an "historic trade-off" between employers and workers, with workers giving up their right to sue in exchange for a system of statutory no-fault benefits. The Tribunal has the exclusive jurisdiction under the Act to determine whether an injured worker's civil right of action has been removed. *Decision No. 1000/97I* (1997), 44 W.S.I.A.T.R. 117, considered the interaction between the *Workers' Compensation Act* and amendments to the *Insurance Act* which create statutory accident benefits and a system of arbitration. It was held that an insurer from whom statutory accident benefits are claimed under the *Statutory Accident Benefits Schedule – Accident before January 1, 1994*, had standing as a party to bring an application

for determination as to a worker's entitlement to compensation under the *Workers' Compensation Act*.

Other interesting right to sue applications include *Decision No. 948/97I* (September 26, 1997), which dealt with issues arising from the settlement of passenger claims in a fatal airplane crash, *Decision No. 876/96* (October 29, 1997) on the interaction between the *Workers' Compensation Act* and the *Occupiers' Liability Act*, and *Decision No. 77/97* (1997), 42 W.C.A.T.R. 225, which removed a worker's right of action against her employer for an emotional disability sustained as a result of being stalked by a co-worker. The Panel did not remove the worker's right to sue for constructive dismissal, as this was a labour relations matter rather than a compensation issue.

Miscellaneous

Other significant legal and medical issues to come before the Tribunal include: *Decision No. 224/97* (July 30, 1997) which considered health care benefits when a worker had suffered a serious compensable head injury and had subsequently become addicted to drugs; *Decision No. 101/95* (1997), 41 W.C.A.T.R. 93, which considered conflicting medical evidence about the causes of a fatal heart attack suffered by a cement finisher; and *Decision No. 426/94* (1997), 44 W.S.I.A.T.R. 14, which considered a fatal heart attack which occurred at work as result of cardiac arrhythmia. *Decision No. 312/96* (1997), 41 W.C.A.T.R. 120, considered the legal concept of an intervening cause which would break the chain of causation with respect to a worker who had been blinded in one eye due to a compensable accident, and then suffered a second non-compensable accident which rendered him blind in both eyes. *Decision No. 825/96* (1997), 41 W.C.A.T.R. 203, is an example of a catastrophic condition attracting a 100% pension, where the worker had suffered a traumatic major head injury and was as disabled as if he had been blinded.

During this reporting period, the Tribunal experimented with two pilot projects involving increased use of mediation and less formal hearing processes: the Early Resolution Stream and the Alternative Hearing Stream. Various approaches developed by these pilot projects are now being applied more generally to Tribunal hearings.

Decision No. 276/97 (1997), 42 W.C.A.T.R. 272, describes the Early Resolution process, which was developed to explore ways of resolving appeals other than by a full oral hearing. The process utilizes Appeals Resolution Officers or AROs (now Early Resolution Officers or EROs) to assist the Panel and parties in clarifying or settling issues. The ERO is responsible for a neutral review and recommendation regarding the case. The Officer must be satisfied that the parties had given their informed consent and that the recommendation is consistent with the policy and law and with findings of fact that might reasonably be made after a hearing.

Decision No. 304/97I (1997), 43 W.S.I.A.T.R. 209, described a typical alternative hearing case where a Tribunal legal worker, through discussions with the parties, was able to clarify their position. The case was unusual in that while the parties agreed on the appropriate outcome, there was limited agreement on the facts. In deciding that the parties' joint submission could not be accepted, the Panel identified a number of factors to consider in reviewing settlement arrangements. While weight must given to the parties' views, decisions under the Act must be made on the merits and justice. Joint submissions must be based on the available evidence and the conclusions must be ones which would likely be drawn by a Panel. The process followed must also be fair and not abusive of the Tribunal's processes.

Decisions No. 336/93R (February 7, 1997) and *759/93RI* (1997), 41 W.C.A.T.R. 24, considered issues arising from the use of independent medical assessors to provide expert opinions to the Tribunal, while at the same time ensuring that the parties have a full opportunity to respond to the new medical information.

APPLICATIONS FOR JUDICIAL REVIEW

In 1997, three applications for judicial review were heard and dismissed by the Divisional Court, in respect of the following Decisions:

- *Decision No. 199/94*, dismissed February 11, 1997;
- *Decision No. 24/96*, dismissed October 24, 1997;
- *Decision No. 1120/96*, dismissed April 17, 1997.

A motion for leave to appeal the decision of the Divisional Court upholding *Decision No. 1120/96* was made to the Court of Appeal and dismissed for delay on September 25, 1997.

Two additional applications for judicial review were heard and dismissed by the Ontario Court (General Division) under Rule 6 of the *Rules of Civil Procedure*:

- The first was an application that a judicial review of *Decision No. 501/96* be heard by expedited process before a single judge of the Ontario Court. This application for expedited process was heard and denied on July 8, 1997. The application for judicial review was subsequently withdrawn.

- The second was an application made for judicial review of a decision of the Tribunal Chair to decline to expedite scheduling of an appeal in priority to appeals received earlier, in order to allow the appeal to reach a Panel prior

to the effective date of the new *Workplace Safety and Insurance Act, 1997*, on January 1, 1998. The application was heard by a judge of the Ontario Court (General Division) on December 23, 1997, by expedited process, and dismissed by endorsement dated December 24, 1997. (An application for leave to appeal from this decision was dismissed after the end of the reporting period.)

In addition, an application to Divisional Court for judicial review of *Decision No. 432/94* was dismissed for delay on June 9, 1997. Two other applications for judicial review, of *Decisions No. 850/94* and *81/95*, were withdrawn.

Judicial Reviews Outstanding

Leave to appeal the decision of the Divisional Court upholding *Decision No. 716/91I* had been granted on April 22, 1996. As of the end of the reporting period, the Court of Appeal had not yet heard the appeal and this matter remained outstanding.

An application for judicial review of *Decision No. 830/96* also remained outstanding.

OTHER COURT MATTERS

On December 2, 1992, an injunction had been granted by the Ontario Court (General Division) restraining an applicant from proceeding with a section 17 application before the Tribunal until the trial or other final disposition of the matter. The Tribunal had been accorded status as a Friend of the Court and opposed the granting of the injunction on jurisdictional grounds. On February 4, 1993, the section 17 applicant's application for leave to appeal from this decision was granted by the Divisional Court, and on June 9, 1993, the Divisional Court set aside the injunction. On January 24, 1994, the section 17 respondent's application for leave to appeal to the Court of Appeal was granted. By endorsement dated March 7, 1997, the Court of Appeal dismissed the appeal and endorsed the decision of the Divisional Court that the injunction be set aside.

OMBUDSMAN COMPLAINTS

Since its creation in 1985, the Tribunal has received, on average, notification of approximately 60 Ombudsman complaints a year. In 1997, the Tribunal was notified of 37 case-related complaints. Since an Ombudsman complaint can relate to a Tribunal

decision made at any time, notifications received in 1997 did not necessarily deal with recent cases.

The Ombudsman Office thoroughly investigates complaints and considers the reasonableness of the Tribunal's analysis. Most Ombudsman investigations result in a letter from the Ombudsman advising that there is no reason to question the Tribunal's decision, although a few have resulted in the Tribunal undertaking a reconsideration process. The *Annual Report 1995 and 1996* noted that since 1990, there have been 26 such reconsiderations and that 23 of these had been completed. During 1997, no Ombudsman letters were received which required a reconsideration process, although one investigation resulted in a changed administrative decision.

Of the three outstanding reconsiderations from 1996, two are still open and one was closed by a Tribunal decision allowing the reconsideration. The Ombudsman investigation in this case indicated a need for clearer guidelines regarding release of potentially harmful information to a worker through the worker's treating physician. When the Tribunal revised its *Practice Direction: Access to Workers' Files* in light of Bill 99, it also incorporated a procedure to be followed in such cases.

The Tribunal Report

VICE-CHAIRS, MEMBERS AND STAFF

Lists of the Vice-Chairs and Members, senior staff and Medical Counsellors who were active at the end of the reporting period, as well as a list of 1997 reappointments and résumés for newly appointed Vice-Chairs and Members, can be found in Appendix A.

OFFICE OF COUNSEL TO THE CHAIR

The Office of Counsel to the Chair has been in existence since the creation of the Tribunal. It is a legal department, separate from the Tribunal Counsel Office, which is not involved in the hearing process or in making submissions in cases. A primary responsibility of Counsel to the Chair and the four Associate Counsel to the Chair is the draft review process.

The Tribunal's draft review process is structured to promote the quality, coherence and consistency of decisions, while at the same time respecting the independence and autonomy of Tribunal decision-makers. OCC lawyers follow the *Guidelines for Review of Draft Decisions*, which were originally published as Appendix A to the *Annual Report 1992 and 1993* and are contained in the Tribunal's *Members' Code of Professional Responsibility*.[1] The Guidelines make clear that drafts are only reviewed at the request of the decision-writer and adopt the Tribunal's *Hallmarks of a Good-Quality Adjudicative Decision* as the standard for review. The Hallmarks were adopted as part of the Tribunal's 1988 *Statement of Mission, Goals and Commitments* and are also part of the *Members' Code of Professional Responsibility*. In the upcoming year, the Tribunal will be reviewing the *Members' Code of Professional Responsibility* to ensure that it remains relevant and up-to-date.

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1 The Tribunal's *Guidelines for Review of Draft Decisions* are also available in *Administrative Agency Practice*, edited by James Sprague, at (1997), 2 A.A.P. 137.

In 1997, the OCC reviewed the draft review process following the release of the Supreme Court of Canada decision in *Québec Inc. v. Québec (Régie des Permis d'alcool)*, [1996] 3 S.C.R. 919. This case clarified that structures should be in place to ensure that the same agency lawyer is not involved in making submissions and also providing advice to decision-makers. No changes were made to the Tribunal's draft review process, since it already complied with this requirement.

In addition to the draft review process, other OCC responsibilities include providing advice to the Chair and Chair's Office, training and professional development, current awareness and research services, administering the reconsideration process, responding to *Freedom of Information and Protection of Privacy Act* issues and complaints, and assisting with Ombudsman matters. Given the enactment of Bill 99 and the appointment of several new Tribunal decision-makers, there was increased emphasis on training during 1997.

TRIBUNAL COUNSEL OFFICE

The Tribunal Counsel Office (TCO) consists of five groups, each reporting to the General Counsel: Intake, the Pre-hearing Group; the Post-hearing Group; the Lawyers and the Medical Liaison Office.

Intake

The Intake department handles all incoming appeal applications and the public's questions about appeals and about the appeal process.

The Intake department is also primarily responsible for the Tribunal's "special section" cases. In 1997, the special section cases included cases about access to the worker's file, employer requests for medical examination and cases on the right to maintain civil actions for damages.

In 1997, the Intake group also included the case analysts, who were responsible for the production of the Case Record.

Pre-hearing Legal Workers

When the Case Record is complete, the case is scheduled, and is transferred either to a pre-hearing legal worker or to a lawyer, for carriage through the hearing process. Over 95% of cases are handled by legal workers. These legal workers deal with matters

that arise pre-hearing, and provide assistance to the parties if there are questions respecting the preparation of the cases.

The pre-hearing legal workers are headed by the Manager of the Pre-hearing Group.

Post-hearing Legal Workers

When a panel identifies that additional information is required after a hearing, a request is made to the post-hearing legal workers, who co-ordinate this continuing investigation.

The post-hearing legal workers are headed by the Senior Legal Worker, Post-hearing.

Lawyers

In 1997 there were five lawyers in TCO, reporting to the General Counsel, as well as four articling students (one from the 1996/97 articling year and three for 1997/98).

Lawyers continued to handle a small number of the most complex cases, involving novel legal issues or issues which have been identified as involving a significant Tribunal interest. The work of TCO lawyers increasingly involved the provision of technical advice to the pre-hearing group or case analysts or work for the new specialized teams. One TCO lawyer was assigned on a full-time basis to the Early Resolution Team. Another TCO lawyer was assigned to the Alternative Hearing Stream. Still another lawyer took responsibility for advising on all NEL, FEL, reinstatement and employer assessment and classification issues, and supervision of the pre-hearing legal workers on those issues, and another undertook a similar role on files involving stress, chronic pain, occupational disease, hearing loss and psychiatric issues. The fifth TCO lawyer advised the case analyst group.

TCO lawyers also handled applications for judicial review and other court-related matters.

Medical Liaison Office

The Tribunal has an interest in ensuring that hearing panels have sufficient and appropriate medical evidence on which to base decisions. All Case Records are reviewed by the Medical Liaison Office for the purpose of identifying those cases in which the medical issues may be problematic, complex or novel to the Tribunal. Cases

selected from this process are referred to the Tribunal's Medical Counsellors to check that the medical assessment of the worker's injury is complete and that the record contains opinions from appropriate experts when required, and to attempt to ensure that questions or concerns about the medical issues that may need clarification are identified.

At the pre-hearing stage, Medical Counsellors may recommend getting more information from a patient's treating physician. In addition, they may recommend obtaining a Medical Assessor's opinion if the diagnosis of the worker's condition is unclear if there is a complex medical problem that needs explanation or if there is an obvious difference of opinion between qualified experts.

At the post-hearing stage, panels requesting further medical investigation may request the assistance of the Medical Liaison Office in preparing specific questions that may be helpful in resolving medical issues that are troubling to the panel. Medical Counsellors assist the Medical Liaison Office in providing additional questions for the hearing panel's consideration.

The Tribunal's relationship with the medical community is regarded as a particularly high Tribunal priority. Ultimately, the quality of the Tribunal's decisions on medical issues is dependent on that relationship. The Medical Liaison Office co-ordinates and oversees all of the Tribunal's interactions with the medical community. That relationship remains positive and is evidenced by the Tribunal's continuing ability to enlist readily leading members of the profession to its service.

Provision of information

The Medical Liaison Office continues to place in the Tribunal Library, medical articles, discussion papers and transcripts of testimony of experts who have appeared at Tribunal hearings regarding medical or scientific issues that contain information that may be useful in future appeals. All transcripts are anonymized and literature cited in these transcripts is placed in the Library's vertical file. This collection of medical information specific to issues that arise in the workers' compensation field is unique within the Ontario workers' compensation system and is accessible to the public. Discussion papers on general medical topics that frequently arise in compensation matters are prepared by the Tribunal's Medical Counsellors or Medical Assessors and are also available in the Library.

Database

In 1993, the Medical Liaison Office began to use a database designed by the Chief Information Officer to help track the nature of medical issues at the Tribunal, the type of investigations conducted by the Medical Liaison Office, decisions using this evidence,

and which Medical Assessors provided expert evidence to the Tribunal. The database helps the Medical Liaison Office analyze the nature and extent of its workload and of the medical investigations conducted by the Tribunal. It is also expected that the database will provide an easily accessible way to determine what information already exists within the Tribunal, that may be useful in appeals with similar medical fact situations.

Audit

In addition to case specific medical evidence issues, the Medical Liaison Office co-ordinates the Tribunal's medical audit. The audit is internal and post-decision. The purpose is to obtain, from the Medical Counsellors, a medical professional's perspective on the manner in which medical facts or theory are treated or recorded in Tribunal decisions. The audit permits the Tribunal to evaluate its processes and practices as they relate to medical issues and medical evidence. The audit highlights areas to educate Tribunal members and staff further through medical education initiatives.

MLO and the Medical Component

Medical Counsellors

The Tribunal's Medical Counsellors are a group of senior specialists who have accepted part-time employment with the Tribunal and serve as wise counsel to the Tribunal in the medical area generally. They are an integral part of the Medical Liaison Office. The Medical Counsellors' Chair is Dr. Ross Fleming. Dr. Douglas Bryce retired from the Medical Counsellor Chair position during the 1997 year. A list of the Medical Counsellors can be found in Appendix A.

Services Provided by Medical Counsellors

Cases selected by the Medical Liaison Office are referred to the Tribunal's Medical Counsellors to ensure that the medical assessment of the worker's injury is complete, that the record contains opinions from appropriate experts when required and that questions or concerns about the medical issues that may need clarification are identified. Unlike the Medical Assessors, they do not examine workers nor do they give evidence or otherwise communicate with hearing panels in individual cases.

Upon review of a case, the Medical Counsellor provides an opinion to the Medical Liaison Office as to whether or not the evidence is sufficient and, if not, what other avenues of investigation ought to be explored. If the Medical Counsellor recommends

further investigation, the Medical Liaison Office then arranges for the necessary investigation to be carried out.

Medical Counsellors continue to monitor the sufficiency and quality of the Tribunal's Medical Assessor roster. Appointments of some of the leading physicians in several highly specialized areas of medicine are initiated by Medical Counsellor recommendation. Medical Counsellors advise the Tribunal Chair generally with respect to medical profession protocol including advice on the question of appropriate fees for the Medical Assessors.

At the case preparation stage, Medical Counsellors advise Tribunal counsel concerning the sufficiency of the medical evidence. Through experience, the Tribunal is satisfied that this does not interfere with the autonomy and independence of the hearing panels. Vice-Chair and Member support for the procedure is virtually unanimous, and all concerned find it impossible to imagine how, given its operational circumstances, the Tribunal could have managed without this procedure.

Through an ongoing series of lectures, the Medical Counsellors have helped to raise the level of the Tribunal's general medical literacy.

Medical Counsellors participate in an internal audit process to obtain from a medical professional's perspective the manner in which medical fact or theory is treated and recorded in Tribunal decisions.

The role of the Medical Counsellor continues to develop and is subject to ongoing review.

Medical Assessors

During 1997, the Tribunal's powers of medical investigation continue to be as set out in sections to 87 to 92 of the *Workers' Compensation Act*. Under these sections, the Appeals Tribunal has the power to initiate medical investigations if it thinks it is necessary in order to determine any medical question at issue on an appeal. Such investigations, including further examination of a worker, are referred to qualified medical practitioners on a list of authorized practitioners appointed by the Lieutenant Governor in Council (the provincial Cabinet).

Section 87 of the Act provides for the establishment, through appointment by Order-in-Council, of what the statute's marginal notes refer to as a "Panel of medical practitioners." In fact, the marginal note's characterization of these physicians as a "panel" is misleading. The Act does not contemplate the physicians acting together as a panel in any respect. It is also clear that they are not intended to have any decision-making capacity. A more accurate collective description of this group of

Order-in-Council appointed physicians would be that of a "roster." It is the physicians on this roster to whom the Tribunal may send a worker for further medical examination. The Tribunal has also adopted the label "Medical Assessors" for the physicians on its roster. This label reflects generally what the Tribunal understands their intended role to be, and serves to distinguish this set of physicians from the Tribunal's own "Medical Counsellors."

The substantial changes proposed to the *Workers' Compensation Act* as a result of Bill 99 are expected to impact only incidentally on the role of the Tribunal's Medical Assessors and Medical Counsellors. Although Tribunal Medical Assessors will no longer be appointed by Order-in-Council, and the statutory requirement for consultation prior to their appointment is removed, their role in assisting in medical investigations is retained. Further, the revised sections of the new Act will authorize the Tribunal to use any health professional as an assessor.

The Appointment Process of Medical Assessors

The recruitment and appointment of the Medical Assessors, under the provisions of section 87 of the Act, has been a long and complex affair. The section has required that the Lieutenant Governor in Council make the appointments after "requesting and considering the views of representatives of employers, workers and physicians." The procedure that has emerged to comply with this requirement is as follows.

The members of the Tribunal's Advisory Group were adopted as the representatives of employers and workers for this purpose. The Tribunal's Advisory Group is composed of organizations representative of workers and employers. The Tribunal's Medical Counsellors were considered to be the representatives of physicians due to their seniority and eminence within the medical profession.

The members of the Advisory Group and the Medical Counsellors were invited to suggest the names of appropriate candidates. The Medical Counsellors consult with other colleagues within their profession. Names suggested by the Advisory Group or which come to the Tribunal Chair's attention from other sources are reviewed with the Medical Counsellors.

A tentative list of potential candidates was developed in this fashion. The physicians on that list were then approached to see if they would be interested in allowing their names to be entered in the approval process. The help of the Medical Counsellors was often enlisted in this recruitment process.

In anticipation of the changes in the new Act, no new Order-in-Council appointments for physicians were sought in 1997. The Medical Liaison Office requested that all the physicians who were on the roster continue to function as Medical Assessors

without the formal Order-in-Council appointment process. The future process for recruitment of Medical Assessors will resemble the old process, with the exception of the Order-in-Council appointment.

Services to be Provided by Assessors

Medical Assessors on the roster are asked to assist the Tribunal in a number of possible ways. Typically, they are asked to examine a worker, study the medical reports of other practitioners and give their opinion on some specific medical question. Physicians specializing in a particular field might be requested to assist in educating the Tribunal or one of its hearing panels in a general way about some medical theory or procedure. The Medical Assessor may be asked for an opinion as to the validity of a particular medical theory which a hearing panel has been asked to accept, or to comment on the representative nature, quality or relevancy of a selection of medical literature that the Tribunal may have been asked to consider.

The opinions are normally sought in the form of written reports containing the history, observations and test results on which the opinion is based. Copies of the reports are made available to the worker, employer and the Board, and references will be typically made to the report in the Tribunal's reasons for its decisions.

It is expected that a written report will normally be sufficient, and attendance at the hearing of the case in question will not be required. On occasion, however, it will be apparent that a Hearing Panel must have the opportunity to question the physician for purposes of clarification and explanation of the opinion, if it is to be able to decide the medical issue with confidence. In those cases, the physician will be asked to appear at the hearing and give oral evidence. On those occasions, the participating parties, as well as the Hearing Panel, have the opportunity to discuss the opinion with the physician.

Where the physician is asked to attend the hearing, every effort is be made to minimize the inconvenience and the impact on the practitioner's usual schedule. Special compensation for attendance at hearings takes into account the schedule disruption associated with such attendance. The tariff arrangements are set according to the fact that appearances at Appeals Tribunal hearings impose an extra burden on most physicians by reason of their unfamiliarity with the process and the fact that some preparation time will usually be required.

Procedural Changes

In 1997, TCO made a number of procedural changes to address the Tribunal's backlog:

1) It introduced a formal waiting list, for cases that could not be put into immediate processing because of the backlog.

2) It began use of the Tribunal's new "inactive status" for cases not ready to proceed.

3) It discontinued the practice of assigning staff to do a full "case analysis" on smaller files. Only the most complex files, or those with unrepresented workers, were assigned for a detailed review of the file by staff before being sent to scheduling. For other cases, the file was not reviewed. The Tribunal Counsel Office checked the file before it was sent to the parties for limited matters only, including respondent notice issues and access issues. Tribunal staff also no longer sorted the file except in a cursory manner.

   The file continued to be assigned to an experienced legal worker for carriage through the hearing process, but case load increases also decreased the ability of these workers to address issues.

4) On many of these "direct flow" cases the Tribunal also began sending the parties an information request to be completed before the appeal was scheduled. The information request required review of the file by the representative as well as the submission of all relevant new evidence. It therefore placed the responsibility for file review on the party instead of the Tribunal. However information requests were not sent on appeals where the worker was unrepresented. Staff continued to do full preparation of files with unrepresented workers.

5) In addition, the Early Resolution Stream continued to offer mediation services on appropriate cases. This remained an experimental approach to ADR techniques which was intended to identify earlier, more informal, interest-based approaches to issue resolution. Its success continued to be monitored to see if efficiency in processing cases was increased or decreased through these techniques.

SCHEDULING

Recording of Regional Hearings

In 1997, the Tribunal phased out the use of court reporters for most regional hearings. Panel members operate portable recording equipment at the hearings. The use

of recording equipment instead of court reporters was put in place for Toronto hearings in 1994 and in light of its success in Toronto, the process was extended to the regional hearings.

A study of the use of recording equipment illustrated the potential savings and feasibility of the process. By recording its own hearings, the Tribunal has control over the security and storage of the tapes. The parties can request transcripts of Tribunal hearings. In accordance with the Tribunal's policy, the parties will be responsible for the costs of producing the transcripts.

Practice Direction: Adjournments and Withdrawals

The Tribunal issued a new practice direction entitled Adjournments and Withdrawals. The practice direction outlines the guidelines for adjournment requests forwarded to the Appeals Administrator or to the Hearing Panel. As well, guidelines are provided for withdrawals of appeals.

Hearing panels are assigned approximately three weeks prior to the hearing date. With last minute adjournments and withdrawals, there is concern about the Tribunal's ability to utilize fully the assigned panels. As a result, the Appeals Administrator now routinely assigns written cases to the panels as replacement cases for oral hearings which adjourn or withdraw on short notice. This practice provides an efficient use of the panels' time and allows written cases to be assigned in a timely manner.

INFORMATION DEPARTMENT

Library Services

The Library is responsible for providing information services to Tribunal staff and Members as well as other researchers, including workers, employers and representatives.

The Library collection focuses on legal and medical aspects of workers' compensation. The collection includes books, government documents, conference proceedings, periodicals, WCB policy documents, Tribunal papers, book chapters and journal articles. All Tribunal decisions are available as well. Particular emphasis is placed on collecting and organizing materials pertinent to the Ontario workers' compensation system. Documents are indexed and made accessible with in-house databases.

The most frequently used Library resource is the database of Tribunal decision summaries. Librarians assist users in formulating their search and train staff and Tribunal panel members in using the database from their own work stations. Librarians also provide assistance to external subscribers to this database.

An improved user interface was added to the Library's public access computers, allowing users easily to print full-text decisions to a laser printer, rather than relying on the photocopier. This may pave the way for the eventual elimination of hard copy Tribunal decisions in the Library, as space becomes more of an issue.

The World Wide Web was used as an information resource more frequently than in previous years. Partly this is due to fee-based database vendors and document delivery services converting to a web interface. As Internet search engines have improved and the amount of useful data available has increased, we increasingly use the web as a complementary source of information.

The Library is also responsible for maintaining the Tribunal's web site (www.wsiat.on.ca). In 1997, the web site was enhanced by adding more information about the appeals process, by making the Appeal Application form available and by adding summaries of recent decisions of interest.

Publications

Reporter

The *Consolidated Index* for the *W.C.A.T. Reporter* was published in 1997. It covers all of the Decisions in Volumes 1 to 38 of the Reporter (1985 to 1996). The *Consolidated Index* makes research of the decisions in the Reporter much easier and faster.

This 500-page special volume contains the following:

- Consolidated Table of Cases
- Consolidated Keyword Index (English and French)
- Consolidated Index to Subject Matter (English and French)
- Consolidated Proceedings Related to Reported Decisions (English and French)

We are again publishing the Tribunal's *Practice Directions* in the Reporter.

Photocopy Service

In October 1997, the Publications Department improved its Photocopy Service for Tribunal decisions by adding service on both the Standard and Rush Service and by reducing prices on the Rush Service.

Service by FAX is now available on the Standard Service. The cost of the Standard Service remained unchanged. On the Rush Service, the limits on the number of decisions were increased and the service charges were lowered.

New Legislation

In anticipation of the coming into force of the *Workplace Safety and Insurance Act, 1997,* on January 1, 1998, the Publications Department began a review of its publications. At the least, the name of virtually all publications would have to be changed as a result of the Tribunal's name change. New keywords were developed to accommodate the statutory changes. The former pamphlet *This Is WCAT* was rewritten to reflect the provisions of the new legislation and is now called *Appealing Workplace Insurance Decisions*. It is a plain language introduction to the Tribunal. The *Practice Directions* were revised to incorporate the new legislation.

Online Database

The Tribunal entered into a contract with QL Systems Ltd. which will result in the creation of a database on QL that includes the full text of Tribunal decisions. Before making the database available to subscribers, QL is developing processes to accommodate all of the Tribunal's existing decisions, back to 1985.

Summaries

In 1997, the Publications Department summarized approximately 1,800 Tribunal decisions.

STATISTICAL SUMMARY

This part of the Annual Report provides a detailed summary of the Tribunal's productivity and caseload trends. The summary begins with an accounting of the numbers and types of cases received at the Tribunal. This is followed by an accounting of the numbers and types of case dispositions. A third section details the year-end

caseload (the difference between the cumulative volume of cases received to December 31, 1997 and the cumulative volume of cases disposed of as at December 31, 1997). The fourth section provides descriptive and comparative analyses of the key events which took place throughout the processing of these cases.

Cases Received

The breakdown of incoming cases is presented by year and by appeal type in Figure 1 (p. 36). In 1997, the Tribunal received 5,107 cases. This caseload intake represented the highest level ever achieved and the seventh consecutive annual increase. The 1997 intake level was 42 per cent higher than the 1996 level and 118 per cent higher than the 1995 level. And in comparison to the 1990 intake, this 1997 level represented a 233 per cent increase.

An examination of the Tribunal's core component of caseload (i.e., the "entitlement" appeal group, where the workload per case is most extensive) reveals even greater increases. Since 1990, the number of cases received in this principal category increased by 425 per cent (from 841 cases in 1990 to 4,419 in 1997) and the proportion of entitlement cases grew from 55 per cent of the total caseload in 1990 to nearly 87 per cent of the total caseload in 1997.

Case Dispositions

In 1997, the Tribunal disposed of 3,070 cases (Figure 2, p. 37). This number represented the highest disposition total and the third consecutive annual productivity increase. The 1997 dispositions total was 22 per cent higher than the 1996 total and 43 per cent higher than the 1995 total. (And in comparison to the 1990 total, it represented a 92 per cent increase.)

A breakdown of the dispositions by processing stage (Figure 3, p. 38) shows that 40 per cent were disposed of before scheduling. Another 10 per cent were disposed of after having been sent for scheduling but before being heard and the remaining cases (50 per cent) were disposed of after undergoing Tribunal hearing processes.

Figure 4 (p. 39) provides information regarding the overall completion times for cases disposed of in 1997. The distribution of case completion times shows that 31 per cent were disposed of within 6 months of their date of application. Twenty-two per cent were disposed of between 6 and 12 months after their applications and 28 per cent were disposed of between 12 and 18 months after their application dates. The remaining 19 per cent required more than 18 months to arrive at their dispositions. The median

overall disposition interval (which included the waiting list and all other waiting intervals as well as weekends and statutory holidays) was 11 months for cases disposed of in 1997.

Remaining Inventory

In Figure 5 (p. 40) we provide an historical account of the Tribunal's caseload inventory, where "inventory" is used to denote the volume of cases that remained to be disposed of on December 31, 1997.

As the figure indicates, 1997 was the sixth consecutive year of inventory accumulation. This inventory accrual is explained by the fact that the Tribunal's major productivity gains (92 per cent since 1990) were surpassed by even greater increases in the volumes of appeal applications (233 per cent since 1990).

By December 31, 1997, the Tribunal's total inventory had grown to 5,557 cases. A breakdown of the inventory by processing stage is provided in Figure 6 (p. 41).

Comparative Statistics for 1997 Hearings and Decision Productivity

In 1997, the Tribunal again posted record high production levels for all hearing and decision-writing processes. (Please refer to Figure 7, p. 41.) Compared with 1996, the Tribunal arranged 18 per cent more hearings, conducted 32 per cent more hearings, and issued 19 per cent more decisions. (When compared with the 1990 production, the 1997 figures were 104, 80, and 53 per cent higher, respectively.)

In total there were 2,066 hearings during 1997, and 1,734 decisions were issued. Most of the decisions represented final rulings (1,435). As well, there were interim decisions (219) and rulings on reconsideration matters (80) (Figure 8, p. 42).

The hearings most commonly took the form of formal, oral proceedings. (Seventy-eight per cent were oral hearings, 2 per cent were accounted for by panel caucuses and 20 per cent were panel reviews of the written records.)

For cases that received decisions in 1997, the party correspondence data indicates a preference for representation by consultants. Of the appeals launched by employers, 47 per cent were represented by consultants. Lawyers represented the employers 31 per cent of the time, company personnel 16 per cent of the time, and the Office of the Employer Adviser 6 per cent of the time. Of the appeals launched by workers, 32 per cent were represented by consultants. The Office of the Worker Adviser was the type of representation given in 22 per cent of these worker appeals. Lawyers and legal

agencies accounted for the worker representation 21 per cent of the time, and union representatives 12 per cent of the time. Workers were unrepresented or self/family represented 10 per cent of the time. They chose other miscellaneous (non-categorized) types approximately 3 per cent of the time and MPPs less than 1 per cent of the time.

FINANCIAL MATTERS

A Statement of Expenditures and Variances for the year ended December 31, 1997, (Figure 9, p. 43) is included in this report.

The accounting firm of Deloitte & Touche has completed a financial audit on the Tribunal's financial statements for the periods ending December 31, 1996, and December 31, 1997. The audit reports are included in this report as Appendix B.

FIGURE 1
Annual Breakdown of Incoming Cases

INPUT BY TYPE	1992 No.	1992 (%)	1993 No.	1993 (%)	1994 No.	1994 (%)	1995 No.	1995 (%)	1996 No.	1996 (%)	1997 No.	1997 (%)
Leave	35	1.9	13	0.6	17	0.8	17	1	12	0.3	17	0.3
Right to Sue	124	6.9	113	5.2	49	2.2	45	2	49	1.4	46	0.9
Medical Exam	76	4.2	49	2.3	41	1.9	26	2	23	0.6	25	0.5
Access	370	20.5	511	23.7	506	23.0	467	23	450	12.5	330	6.5
Special Section	605	33.5	686	31.9	613	27.9	555	28	534	14.8	418	8.2
Pension	58	3.2	84	3.9	32	1.5	12	1	33	0.9	35	0.7
N.E.L./F.E.L. *	3	0.2	13	0.6	34	1.5	66	2	257	7.1	251	4.9
Commutation	26	1.4	36	1.7	35	1.6	33	2	42	1.2	48	0.9
Employer Assessment	25	1.4	26	1.2	58	2.6	78	3	170	4.7	890	17.4
Entitlement	816	45.2	988	45.9	1099	49.9	1254	50	2133	59.2	3048	59.7
Reinstatement	39	2.2	49	2.3	56	2.5	63	3	32	0.9	40	0.8
Vocational Rehabilitation **	19	1.1	72	3.3	80	3.6	79	4	121	3.4	107	2.1
Entitlement-related	986	54.6	1268	58.9	1394	63.3	1585	63	2788	77.4	2819	86.5
Judicial Review	7	0.4	9	0.4	8	0.4	5	0	5	0.1	3	0.1
Ombudsman Request	44	2.4	50	2.3	35	1.6	50	2	49	1.4	36	0.7
Reconsideration	61	3.4	63	2.9	74	3.4	95	3	130	3.6	156	3.1
Clarification	0	0.0	0	0.0	0	0.0	0	0	0	0.0	0	0.0
Post-decision	112	6.2	122	5.7	117	5.3	150	6.4	184	5.1	195	3.8
No Jurisdiction	103	5.7	77	3.6	77	3.5	48	2.1	98	2.7	75	1.5
TOTAL	1806		2153		2201		2338		3604		5107	

* **NOTE:** This category represents appeals related to non-economic loss and future economic loss pension criteria introduced by Bill 162.

** **NOTE:** This category represents appeals related to the increased Vocational Rehabilitation requirements introduced by Bill 162.

FIGURE 2
Annual Breakdown of Cases Disposed

OUTPUT BY TYPE	1992 No.	(%)	1993 No	(%)	1994 No.	(%)	1995 No.	(%)	1996 No.	(%)	1997 No.	(%)
Leave	29	1.7	31	1.7	15	0.8	15	0.7	16	0.6	11	0.4
Right to Sue	113	6.8	101	5.4	84	4.7	57	2.7	49	2.0	74	2.4
Medical Exam	70	4.2	54	2.9	40	2.2	29	1.4	26	1.0	24	0.8
Access	389	23.4	522	28.0	499	27.8	475	22.2	469	18.7	359	11.7
Special Section	601	36.1	708	38.3	638	35.6	576	26.9	560	22.3	468	15.2
Pension	50	3.0	63	3.4	49	2.7	54	2.5	28	1.1	26	0.8
N.E.L./F.E.L. *	1	0.1	3	0.2	12	0.7	31	1.4	58	2.3	171	5.6
Commutation	10	0.6	26	1.4	34	1.9	29	1.4	41	1.6	31	1.0
Employer Assessment	24	1.4	18	1.0	22	1.2	41	1.9	85	3.4	212	6.9
Entitlement	729	43.8	794	42.6	766	42.7	1112	51.9	1307	52.0	1742	56.7
Reinstatement	31	1.9	34	1.8	28	1.6	57	2.7	56	2.2	45	1.5
Vocational Rehabilitation **	5	0.3	25	1.3	52	2.9	65	3.0	83	3.3	102	3.3
Entitlement-related	850	51.1	963	51.6	963	53.7	1389	64.8	1658	66.0	2329	75.9
Judicial Review	4	0.2	15	0.8	3	0.2	7	0.3	6	0.2	6	0.2
Ombudsman	53	3.2	42	2.3	42	2.3	42	2.0	52	2.1	46	1.5
Reconsideration	67	4.0	61	3.3	63	3.5	85	4.0	125	5.0	114	3.7
Clarification	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Post-decision	124	7.5	118	6.3	108	6.0	134	6.3	183	7.3	166	5.4
No Jurisdiction	89	5.3	76	4.1	83	4.6	43	2.0	111	4.4	107	3.5
TOTAL	1664		1865		1792		2142		2512		3070	

* **NOTE:** This category represents appeals related to the non-economic loss and future economic loss pension criteria introduced by Bill 162.

** **NOTE:** This category represents appeals related to the increased Vocational Rehabilitation requirements introduced by Bill 162.

FIGURE 3
Cases Disposed Of in 1997
(by Processing Stage and by Appeal Category)

	Medical Exam & Access	Right to Sue	Leave & Entitlement	Post-decision	ALL TYPES
Before Scheduling					
Withdrawn by Appellant	304	3	217	1	525
Settled at Tribunal	2	0	0	0	2
Made Inactive or Abandoned	1	10	547	1	559
Found Non-jurisdictional	0	0	66	0	66
Other	22	0	33	21	76
Subtotal	329	13	863	23	1228
Before Hearing					
Withdrawn by Appellant	8	10	147	3	168
Settled at Tribunal	0	5	0	1	6
Made Inactive or Abandoned	0	10	63	22	95
Other	0	0	0	32	32
Subtotal	8	25	210	58	301
After Hearing					
Withdrawn by Appellant without Decision	0	0	12	0	12
Made Inactive or Abandoned with Decision	0	0	4	1	5
Disposed Of following Tribunal Decision	46	36	1358	84	1524
Subtotal	46	36	1374	85	1541
TOTAL	383	74	2447	166	3070

FIGURE 4
Distribution of Completion Times

	Percentage of Cases Disposed Of			
	Within 6 Months	Between 6 and 12 Months	Between 12 and 18 Months	More than 18 Months
Medical Exam and Access	92%	7%	<1%	<1%
Right to Sue and Entitlement*	18%	24%	34%	24%
Post-decision Issues	41%	37%	16%	7%
Jurisdictional Issues	98%	2%	0%	0%
ALL CASES	31%	22%	28%	19%

* Note: The "Right to Sue and Entitlement" category also includes leave applications, reinstatement appeals, vocational rehabilitation issues, employer assessment appeals, pension and wage loss appeals and pension commutation issues.

FIGURE 5
Cases Received, Case Dispositions and Remaining Case Inventory

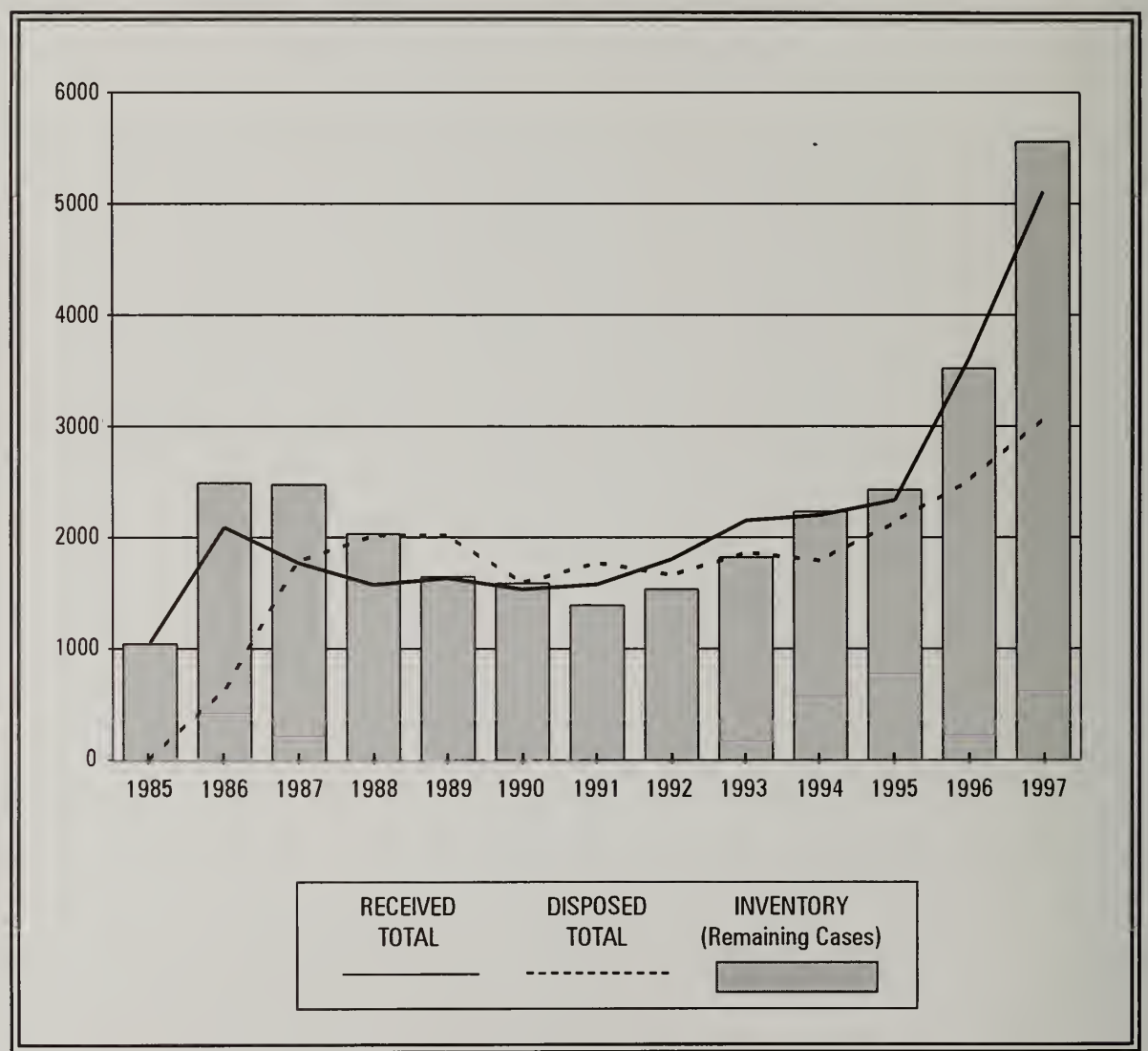


FIGURE 6
Distribution of Cases in Inventory
(Cases not Disposed Of as at December 31, 1997)

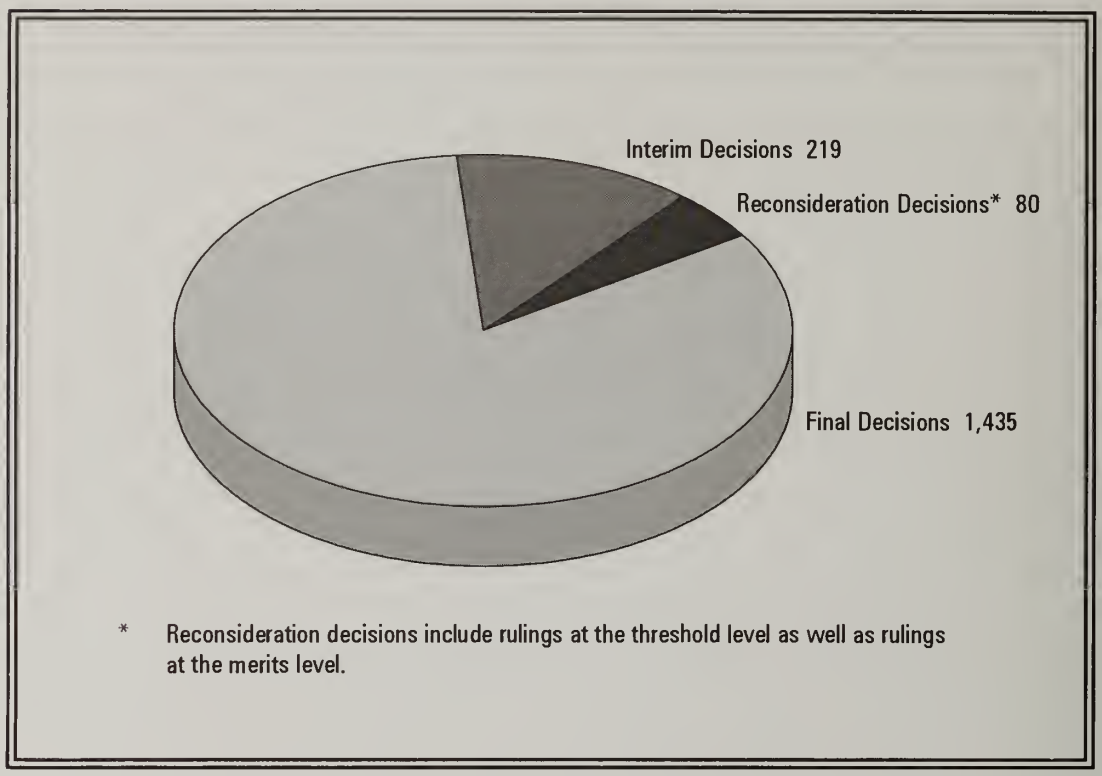
	Special Section and Appeal Cases	Post-decision Cases		
		Reconsideration	Ombudsman	Judicial Review
PRE-PROCESSING				
Cases on Waiting List	2274	n/a	n/a	n/a
CASES IN PROCESS				
Case Record Preparation	441	n/a	n/a	n/a
Pre-scheduling, TCO* or OCC** Preparation	513	79	36	3
Scheduling (or Rescheduling)	592	4	n/a	n/a
Awaiting Hearing at WSIAT	546	0	n/a	n/a
Post-hearing, TCO* or OCC** Follow-up	333	9	1	n/a
WSIAT Decision-writing	643	24	n/a	n/a
Closing Process	49	9	0	1
Subtotal	3117	125	37	1
TOTAL (All Cases)	5391	125	37	4

* TCO refers to the Tribunal Counsel Office.
** OCC refers to the Office of the Counsel to the Chair.

FIGURE 7
Scheduling, Hearings and Decisions

	1993	1994	1995	1996	1997
Scheduling Dates Arranged	1580	1697	1591	2032	2403
Hearings Conducted	1239	1415	1332	1563	2066
Cases Heard	1120	1299	1223	1449	1942
Decisions Issued	907	1031	1403	1460	1734
Cases Disposed Of by Decision	839	862	1148	1302	1524

FIGURE 8
Decisions Issued in 1997



* Reconsideration decisions include rulings at the threshold level as well as rulings at the merits level.

FIGURE 9
Statement of Expenditures and Variances

Workers' Compensation Appeals Tribunal
1997 Statement of Expenditures and Variances
as at December 31, 1997 (In $000's)

	1997 Budget	1997 Actual	Variance $	Variance %
Salaries & Wages	7,721.0	7,217.0	504.0	6.53
Employee Benefits	1,342.0	1,326.0	16.0	1.19
Transportation & Communication	529.0	626.0	(97.0)	(18.34)
Services	3,121.0	3,773.0	(652.0)	(20.89)
Supplies & Equipment	300.0	297.0	(21.0)	7.00
TOTAL OPERATING EXPENDITURES	13,013.0	13,221.0	(208.0)	(1.60)
Capital Expenditures	160.0	6.0	154.0	96.25
TOTAL EXPENDITURES	13,173.0	13,227.0	(54.0)	(0.41)

APPENDIX A

VICE-CHAIRS AND MEMBERS IN 1997

This is a list of Vice-Chairs and Members whose Order-in-Council appointments were active at the end of the reporting period.

Full-time

Chair

Strachan, Ian J.

Vice-Chairs

Ballam, Dianne
Bigras, Jean Guy
Dechert, Ken
Keil, Martha
Kroeker, Larry
McCombie, Nick
McIntosh-Janis, Faye
Moore, John
Sandomirsky, Janice
Sutherland, Sara

Members Representative of Workers

Crocker, James
Jackson, Faith
Lebert, Raymond
Robillard, Maurice
Thompson, Patti

Members Representative of Employers

Barbeau, Pauline
Chapman, Stanley
Copeland, Susan
Meslin, Martin
Nipshagen, Gerry

Part-time

Vice-Chairs

Alexander, Judith
Cook, Brian
Farrer, Jennifer Bradley
Faubert, Marsha
Flanagan, William
Frazee, Catherine
Kenny, Maureen
Libman, Peter
Marafioti, Victor
McGrath, Joy
Mole, Ellen
Newman, Elaine
Onen, Zeynep
Renault, Audrey
Robeson, Virginia
Signoroni, Antonio

Members Representative of Workers

Anderson, James
Beattie, David
Besner, Diane
Felice, Douglas
Ferrari, Mary
Klym, Peter
Rao, Fortunato
Timms, David

Members Representative of Employers

Apsey, Robert
Donaldson, Joseph
Fay, Carole Ann
Howes, Gerald
Robb, C. James
Séguin, Jacques
Shuel, Robert
Young, Barbara

VICE-CHAIRS AND MEMBERS – REAPPOINTMENTS

Apsey, Robert	December 11, 1997
Barbeau, Pauline	July 1, 1997
Beattie, David	December 11, 1997
Bigras, Jean Guy	July 1, 1997
Chapman, Stanley	July 1, 1997
Cook, Brian	September 6, 1997
Copeland, Susan	April 6, 1997
Crocker, James	August 1, 1997
Donaldson, Joseph	August 4, 1997
Faubert, Marsha	July 1, 1997
Fay, Carole Ann	August 4, 1997
Flanagan, William	June 1, 1997

Frazee, Catherine	February 1, 1997
Jackson, Faith	July 1, 1997
Keil, Martha	October 8, 1997
Kenny, Maureen	July 1, 1997
Lebert, Raymond	June 1, 1997
Marafioti, Victor	July 1, 1997
McCombie, Nick	July 1, 1997
McGrath, Joy	July 1, 1997
Meslin, Martin	August 1, 1997
Moore, John	May 1, 1997
Onen, Zeynep	October 1, 1997
Rao, Fortunato	February 11, 1997
Robb, C. James	July 1, 1997
Robeson, Virginia	July 1, 1997
Robillard, Maurice	July 1, 1997
Sandomirsky, Janice	July 1, 1997
Signoroni, Antonio	October 1, 1997
Strachan, Ian J.	July 1, 1997
Sutherland, Sara	September 6, 1997
Thompson, Patti	October 10, 1997

NEW APPOINTMENTS DURING 1997

Dianne J. Ballam

Ms. Ballam received her law degree in 1989 and was called to the bar in 1991. Her private practice, in Lindsay, Ontario, focused on criminal law. She also has a degree in social services, and prior to attending law school, she worked in the social services field as a counsellor and field worker.

Kenneth W. Dechert

Mr. Dechert is a lawyer who has been in private practice since 1982, where he dealt with criminal, family, real estate, corporate and commercial law.

Lawrence Kroeker

Mr. Kroeker is a lawyer called to the bar in 1973. He has been active in commercial, industrial and residential development in the Niagara area. In addition to his law degree, he has a Masters Degree in Business Administration from McMaster University.

SENIOR STAFF

The following is a list of the senior staff who were employed at the Tribunal during the reporting year.

W. Doug Jago*	Director and General Manager
Linda Moskovits	Chief Information Officer
Beverley Pavuls	Chief Administration Officer
Carole Prest	Counsel to the Tribunal Chair
Eleanor Smith	Tribunal General Counsel
Peter Taylor	Manager, Financial Administration

MEDICAL COUNSELLORS

The following is a list of the Tribunal's Medical Counsellors.

Dr. John D. Atcheson	Psychiatry
Dr. Douglas P. Bryce	Otolaryngology
Dr. Ross Fleming	Neurosurgery
Dr. W. Robert Harris	Orthopaedic Surgery
Dr. Robert L. MacMillan	Internal Medicine
Dr. John S. Speakman	Ophthalmology
Dr. Neil Walters	General Surgery

* Mr. Jago was appointed Director and General Manager as of July 1, 1997. Prior to that date, he had been a full-time Member Representative of Employers since 1985.

APPENDIX B

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL

REPORT AND FINANCIAL STATEMENTS
December 31, 1996

Auditors' Report

To the Workplace Safety and Insurance Appeals Tribunal

We have audited the balance sheet of the Workplace Safety and Insurance Appeals Tribunal as at December 31, 1996 and the statement of operations for the year then ended. These financial statements are the responsibility of the Tribunal's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform an audit to obtain reasonable assurance whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

In our opinion, these financial statements present fairly, in all material respects, the financial position of the Workplace Safety and Insurance Appeals Tribunal as at December 31, 1996 and the results of its operations for the year then ended in accordance with generally accepted accounting principles.

Deloitte & Touche
Chartered Accountants
Toronto, Ontario
May 29, 1998

BALANCE SHEET
December 31, 1996

	1996	1995
ASSETS		
Cash	**$ 1,641,200**	$ 646,500
Receivable from Workplace Safety and Insurance Board (Schedule 2)	**1,885,000**	2,050,500
Salaries and wages recoverable (Note 3)	**148,700**	154,000
Advances	**15,100**	11,000
	$ 3,690,000	$ 2,862,000
LIABILITIES		
Accounts payable and accrued liabilities	**$ 2,290,000**	$ 1,462,000
Operating advance from Workplace Safety and Insurance Board (Note 4)	**1,400,000**	1,400,000
	$ 3,690,000	$ 2,862,000

Approved on behalf of the Workplace Safety and Insurance Appeals Tribunal
I.J. Strachan, Chairman

STATEMENT OF OPERATIONS
Year ended December 31, 1996

	1996	1995
FUNDING REVENUE (Schedule 1)	**$ 11,885,200**	$ 12,257,100
OPERATING EXPENSES		
Salaries and wages	**6,797,000**	6,757,300
Employee benefits	**1,131,000**	1,182,000
Transportation and communication	**505,700**	497,600
Services	**3,150,900**	3,228,900
Supplies and equipment	**194,900**	229,300
Social contract commitment	**81,900**	327,700
TOTAL OPERATING EXPENSES	**11,861,400**	12,222,800
CAPITAL EXPENSES	**45,700**	81,600
TOTAL EXPENSES	**11,907,100**	12,304,400
EXCESS OF EXPENSES OVER REVENUE BEFORE BANK INTEREST INCOME	**(51,900)**	(47,300)
BANK INTEREST INCOME	**51,900**	47,300
RESULTS FROM OPERATIONS	**$ -**	$ -

NOTES TO THE FINANCIAL STATEMENTS
December 31, 1996

1. GENERAL

On January 1, 1998, the Tribunal changed its name from Workers' Compensation Appeals Tribunal to Workplace Safety and Insurance Appeals Tribunal pursuant to the Workplace Safety and Insurance Act 1997. The organization was originally created by the Workers' Compensation Amendment Act, S.O. 1984, Chapter 58 - section 82, which came into force on October 1, 1985.

The purpose of the Tribunal is to hear, determine and dispose of in a fair, impartial and independent manner, appeals by workers and employers in connection with decisions, orders or rulings of the Workplace Safety and Insurance Board (formerly Workers' Compensation Board), and any matters or issues expressly conferred upon the Tribunal by the Act.

2. SIGNIFICANT ACCOUNTING POLICIES

The Tribunal's financial statements are prepared in accordance with generally accepted accounting principles.

Revenue and expenses: Revenue and expenses are recognized on an accrual basis.

Capital and expenditures: All expenditures of a capital nature are expensed in the year of acquisition.

3. SALARIES AND WAGES RECOVERABLE

Certain employees are on secondment with the Ministry of Community and Social Services of the Government of Ontario and the Society of Ontario Adjudicators and Regulators and their remuneration is recoverable.

4. OPERATING ADVANCE FROM WORKPLACE SAFETY AND INSURANCE BOARD

The operating advance is interest-free with no specific terms of payment.

5. STATEMENT OF CHANGES IN FINANCIAL POSITION

A statement of changes in financial position has not been presented as the information which would be included therein is determinable from the statements provided.

6. COMPARATIVE FIGURES

Certain of the comparative figures have been reclassified to conform to the current year's presentation.

SCHEDULE OF FUNDING REVENUE
Year ended December 31, 1996 Schedule 1

	1996	1995
TOTAL OPERATING EXPENSES	**$ 11,861,400**	$ 12,222,800
CAPITAL EXPENSES	**45,700**	81,600
TOTAL EXPENSES	**11,907,100**	12,304,400
LESS: BANK INTEREST INCOME	**51,900**	47,300
FUNDING REVENUE	**$ 11,855,200**	$ 12,257,100

SCHEDULE OF RECEIVABLE FROM WORKPLACE SAFETY AND INSURANCE BOARD
Year ended December 31, 1996 Schedule 2

	1996	1995
FUNDING REVENUE (Schedule 1)	**$ 11,855,200**	$ 12,257,100
REIMBURSEMENT FROM WORKPLACE SAFETY AND INSURANCE BOARD	**12,020,700**	13,257,900
CHANGE IN RECEIVABLE FROM WORKPLACE SAFETY AND INSURANCE BOARD	**(165,500)**	(1,000,800)
RECEIVABLE FROM WORKPLACE SAFETY AND INSURANCE BOARD, BEGINNING OF YEAR	**2,050,500**	3,051,300
RECEIVABLE FROM WORKPLACE SAFETY AND INSURANCE BOARD, END OF YEAR	**$ 1,885,000**	$ 2,050,500

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL

REPORT AND FINANCIAL STATEMENTS
December 31, 1997

Auditors' Report

To the Workplace Safety and Insurance Appeals Tribunal

We have audited the balance sheet of the Workplace Safety and Insurance Appeals Tribunal as at December 31, 1997 and the statement of operations for the year then ended. These financial statements are the responsibility of the Tribunal's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform an audit to obtain reasonable assurance whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

In our opinion, these financial statements present fairly, in all material respects, the financial position of the Workplace Safety and Insurance Appeals Tribunal as at December 31, 1997 and the results of its operations for the year then ended in accordance with generally accepted accounting principles.

Deloitte & Touche
Chartered Accountants
Toronto, Ontario
May 29, 1998

BALANCE SHEET
December 31, 1997

	1997	1996
ASSETS		
Cash	**$ 1,425,000**	$ 1,641,200
Receivable from Workplace Safety and Insurance Board (Schedule 2)	**2,168,500**	1,885,000
Salaries and wages recoverable (Note 3)	**-**	148,700
Advances	**10,300**	15,100
	3,603,800	$ 3,690,000
LIABILITIES		
Accounts payable and accrued liabilities	**$ 2,203,800**	$ 2,290,000
Operating advance from Workplace Safety and Insurance Board (Note 4)	**1,400,000**	1,400,000
	$ 3,603,800	$ 3,690,000

Approved on behalf of the Workplace Safety and Insurance Appeals Tribunal
I.J. Strachan, Chairman

STATEMENT OF OPERATIONS
Year ended December 31, 1997

	1997	1996
FUNDING REVENUE (Schedule 1)	**$ 13,111,000**	$ 11,885,200
OPERATING EXPENSES		
Salaries and wages	**7,217,100**	6,797,000
Employee benefits	**1,325,800**	1,131,000
Transportation and communication	**625,800**	505,700
Services	**3,690,400**	3,150,900
Supplies and equipment	**279,000**	194,900
Social contract commitment	**-**	81,900
TOTAL OPERATING EXPENSES	**13,138,100**	11,861,400
CAPITAL EXPENSES	**6,000**	45,700
TOTAL EXPENSES	**13,144,100**	11,907,100
EXCESS OF EXPENSES OVER REVENUE BEFORE BANK INTEREST INCOME	**(33,100)**	(51,900)
BANK INTEREST INCOME	**33,100**	51,900
RESULTS FROM OPERATIONS	$ -	$ -

NOTES TO THE FINANCIAL STATEMENTS
December 31, 1997

1. GENERAL

On January 1, 1998, the Tribunal changed its name from Workers' Compensation Appeals Tribunal to Workplace Safety and Insurance Appeals Tribunal pursuant to the Workplace Safety and Insurance Act 1997. The organization was originally created by the Workers' Compensation Amendment Act, S.O. 1984, Chapter 58 - section 82, which came into force on October 1, 1985.

The purpose of the Tribunal is to hear, determine and dispose of in a fair, impartial and independent manner, appeals by workers and employers in connection with decisions, orders or rulings of the Workplace Safety and Insurance Board (formerly Workers' Compensation Board), and any matters or issues expressly conferred upon the Tribunal by the Act.

2. SIGNIFICANT ACCOUNTING POLICIES

The Tribunal's financial statements are prepared in accordance with generally accepted accounting principles.

Revenue and expenses: Revenue and expenses are recognized on an accrual basis.

Capital and expenditures: All expenditures of a capital nature are expensed in the year of acquisition.

3. SALARIES AND WAGES RECOVERABLE

Salaries and wages recoverable consits of amounts recoverable from the Ministry of Community and Social Services of the Government of Ontario and the Society of Ontario Adjudicators and Regulators for employees who were seconded to those respective organizations.

4. OPERATING ADVANCE FROM WORKPLACE SAFETY AND INSURANCE BOARD

The operating advance is interest-free with no specific terms of payment.

5. STATEMENT OF CHANGES IN FINANCIAL POSITION

A statement of changes in financial position has not been presented as the information which would be included therein determineable to the statements provided.

SCHEDULE OF FUNDING REVENUE
Year ended December 31, 1997 Schedule 1

	1997	1996
TOTAL OPERATING EXPENSES	**$ 13,138,100**	$ 11,861,400
CAPITAL EXPENSES	**6,000**	45,700
TOTAL EXPENSES	**13,144,100**	11,907,100
LESS: BANK INTEREST INCOME	**33,100**	51,900
FUNDING REVENUE	**$ 13,111,000**	$ 11,855,200

SCHEDULE OF RECEIVABLE FROM WORKPLACE SAFETY AND INSURANCE BOARD
Year ended December 31, 1997 Schedule 2

	1997	1996
FUNDING REVENUE (Schedule 1)	**$ 13,111,000**	$ 11,855,200
REIMBURSEMENT FROM WORKPLACE SAFETY AND INSURANCE BOARD	**12,827,500**	12,020,700
CHANGE IN RECEIVABLE FROM WORKPLACE SAFETY AND INSURANCE BOARD	**283,500**	(165,500)
RECEIVABLE FROM WORKPLACE SAFETY AND INSURANCE BOARD, BEGINNING OF YEAR	**1,885,000**	2,050,500
RECEIVABLE FROM WORKPLACE SAFETY AND INSURANCE BOARD, END OF YEAR	**$ 2,168,500**	$ 1,885,000